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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY CHANDLER,

Defendant and Appellant.

B206613

(Los Angeles County

Super. Ct. No. BA329569)

APPEAL from a judgment of the Superior Court of Los Angeles County. John S. Fisher, Judge. Affirmed.

Alex N. Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

A deputy sheriff ran into appellant's cell at the Los Angeles County jail to stop him from hanging himself. Appellant attacked that deputy and fought with other deputies who arrived at the cell. He was convicted of resisting an executive officer in the performance of duty, assault on a peace officer, and resisting a peace officer. On appeal, he contends that the trial court erred when it refused to instruct on self-defense. We find no error and affirm.

PROCEDURAL HISTORY

Count 1 of the information charged appellant with assaulting a peace officer, Deputy Joshua Lambert, with a deadly weapon and by means of force likely to produce great bodily injury (§ 245, subd. (c)).¹ There was no count 2. Counts 3 and 4 charged appellant with resisting the performance of executive duty of, respectively, Deputy Lambert and Deputy Orlando Saldana (§ 69).

On count 1, the jury found appellant guilty of a lesser included offense, assault on a peace officer (§ 241, subd. (b)), a misdemeanor. On count 3, appellant was convicted of the felony section 69 violation on Deputy Lambert. On count 4, the section 69 charge for Deputy Saldana, the jury found appellant guilty of a lesser included offense, resisting a peace officer (§ 148, subd. (a)), a misdemeanor.

Appellant was sentenced to the upper term of three years in prison for the section 69 violation. The misdemeanor counts resulted in jail sentences that are to be served concurrently with the felony.

FACTS

Around 7:10 p.m. on September 8, 2007, Deputy Lambert was performing a security check at a row of cells in the jail. Lambert's partner, Deputy Saldana, was on duty inside the nearby security cage. The doors to the cells were opened by moving a lever in the cage.

¹ All code references are to the Penal Code unless otherwise stated.

Both of the deputies were in uniform. Their duties included providing safety for the inmates. Deputy Saldana was about the same height and weight as appellant, five feet six inches and 180 pounds. The record does not show Deputy Lambert's size.

Deputy Lambert looked into the window of the cell that held appellant, alone. He saw appellant "hanging himself at the rear of the cell." Specifically, appellant was seated on the floor, facing the door, with a noose of braided bed sheets around his neck.² The noose was attached to a vent on the wall, six or seven feet above the floor. Appellant had loosely tied his hands and feet with ripped, braided bed linen. His head was down and his eyes were closed. He appeared to be unconscious.

Deputy Lambert yelled to Deputy Saldana to open the door of the cell, as appellant was hanging himself. Saldana pushed down the lever in the cage and opened the door. He saw Lambert enter the cell but could not see into it from the cage.

At the trial, Deputy Lambert gave the only testimony about what happened next. Leaving the door open, he went into the cell to try to save appellant's life. He removed the noose from the vent and then from appellant's neck. He took off the bindings on appellant's wrists and ankles. At first, appellant did not open his eyes or move. Once the noose and bindings were off, he suddenly jumped up and struck Lambert in the chest with the hard white plaster cast that covered his left arm. Lambert put his hands in front of his face. Appellant struck him with the cast "in the left shoulder or collarbone area and once to the back of the head." After the third blow from the cast, Lambert called for backup on his walkie-talkie radio and began to fight back. He punched appellant in the face while he yelled at him to stop fighting.

Deputy Saldana arrived in response to Deputy Lambert's call for help. He saw that appellant and Lambert were standing up, appellant was swinging the cast at Lambert, and Lambert was punching appellant.

² Deputy Lambert later observed that there were unspecified red marks on the rope.

Deputy Saldana entered the fray. He hit appellant in the face with his fist and tried unsuccessfully to secure appellant's arms behind his back. Exchanging punches, the two deputies and appellant fell to the floor. The struggle continued there. The deputies kept yelling to appellant to stop fighting, but he did not stop. Deputy Lambert, who was on top of appellant, sprayed pepper spray into appellant's face. The spray had no effect. Appellant went on punching and swinging the cast, and the deputies continued to hit him while ordering him to stop.

Appellant managed to get up and run through the open door of the cell. Just outside the cell, Deputy Lambert grabbed appellant by the pants, pulled him to the floor, and sat on top of him. Appellant continued to swing his arms and kick. Lambert put his hand behind appellant's neck and pinned his face to the floor. Deputy Saldana put his knee in appellant's back and punched him in the head and face. Appellant refused to put his hands behind his back, tried to elbow Lambert in the face, and succeeded in kicking him. Lambert punched appellant in the face, neck, back, and head. Appellant still struggled, flailed his arms and legs, and tried to get up. Lambert used his flashlight to strike appellant in the legs and elbow. Saldana grabbed appellant's arm, the one with the cast, and hit him in the elbow with a flashlight.

At that point, two other sheriff's deputies, Timothy Lee and Curtis Brown, arrived and joined the fight outside the cell. Deputy Lee was very large in size. He sprayed pepper spray in appellant's face. Working together, the four deputies succeeded in controlling appellant by forcing his arms behind his back.

The blow to Deputy Lambert's head caused a headache for that night and a bump that lasted for about a week. He also received medical treatment for cuts and had slight bruising and redness from the blow to his chest. Deputy Saldana had scrapes on his arm and elbow.

The foregoing description of what happened was presented through the testimony of the four deputies. Appellant did not testify.

DISCUSSION

Section 69 punishes “[e]very person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, *or* who knowingly resists, by the use of force or violence, such officer, in the performance of his duty.” (Italics added.) As shown by the word “or,” the statute punishes two types of offenses. (*People v. Lacefield* (2007) 157 Cal.App.4th 249, 255, citing *In re Manuel G.* (1997) 16 Cal.4th 805, 814.) The prosecutor relied on the second type of offense here, arguing that “the People [had] to prove that the defendant unlawfully used force or violence to resist an executive officer.” The jury was instructed on that offense via Judicial Council of California Criminal Jury Instructions (2007-2008) CALCRIM No. 2652.

Appellant contends that the trial court committed prejudicial error when it refused to instruct on self-defense, as that defense was the core of the defense case and there was substantial evidence to support it. The contention lacks merit.

1. The Discussion of the Instructions

When the trial court discussed the instructions with counsel, the prosecutor argued that there was no evidence to support instructing on excessive force. The trial court decided that it had to instruct on that issue, as excessive force was an issue for the jury. The jury was completely instructed on that point. For example, CALCRIM No. 2652 explained that the executive officer had to be performing lawful duty at the time of the defendant’s resistance, a peace officer is an executive officer, and “[a] peace officer is not lawfully performing his duties if he uses unreasonable or excessive force in his duties.”

Defense counsel requested CALCRIM Nos. 3470 through 3477, on self-defense. The trial court asked whether there was evidence of self-defense. Defense counsel responded: “Because he was being beaten. He was sprayed in his face, and he was trying to get away from the officers who were doing this beating. I think that’s self defense.” The prosecutor maintained that there was no evidence of self-defense, as “all of the officers testified with each application of force or measures used, the defendant kept escalating the situation.” Defense counsel countered that it was up to the jury

whether self-defense occurred, and the officers used excessive force when appellant was trying to get away from them, which gave him the right to defend himself. The court said it had watched throughout the trial to see if there was substantial evidence to support instructing on self-defense. It found no such evidence, as appellant “was the original aggressor.” Over defense objection, it refused to instruct on self-defense. It later recognized that the jury would nonetheless hear something about that defense through some of the language in CALCRIM No. 2670’s definition of unlawful performance of duty. It referred to this language: “A peace officer may use reasonable force to arrest or detain someone[,] to prevent escape, to overcome resistance, or in self-defense. If a peace officer uses unreasonable or excessive force, that person may lawfully use reasonable force to defend himself. A person being arrested used reasonable force when he uses that degree of force that he actually believes is reasonably necessary to protect himself from the officers[’] use of unreasonable or excessive force, and no more . . . force than a reasonable person in the same situation.”

2. Analysis

The trial court must instruct on the general principles of law relevant to the issues raised by the evidence, even in the absence of a request for the instruction. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) Appellant relies on *People v. Elize* (1999) 71 Cal.App.4th 605, 616, in which refusal of requested instructions on self-defense was held to be reversible error. We find *Elize* to be distinguishable because its facts contained evidence of self-defense, and there was no such evidence here. Deputy Lambert performed his duty, by coming into the cell to assure appellant’s safety. Appellant suddenly attacked Lambert when the noose and bindings were removed, and thereafter continued to fight with Lambert and the three other deputies who came to the cell. Appellant’s initiation of the physical attack created the circumstances that justified the deputies’ attack on him, so the self-defense doctrine is inapplicable. (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1.)

Appellant particularly argues that the jury needed an instruction that the original aggressor regains the right of self-defense if he attempts to withdraw from the fight and

communicates that intent to his opponent. (1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Defenses, § 75, pp. 409-410; see also *People v. Quach* (2004) 116 Cal.App.4th 294, 300-303.) Appellant maintains that he regained the right of self-defense when he tried to run from the cell, as that behavior showed a desire to stop the fighting. The argument is creative but unpersuasive. Jail inmates are not allowed to run from their cells. Appellant ignored the deputies' orders to stop fighting and continued trying to assault them, before and after he tried to run away. If he wanted to stop the fight, he could have simply stopped fighting. Taken in context, his running from the cell showed further resistance to the deputies, rather than an attempt to communicate a desire to stop the fight.

DISPOSITION

The judgment is affirmed.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.